

FILED
COURT OF APPEALS
DIVISION II
2016 SEP 15 PM 1:18
STATE OF WASHINGTON
BY AP
DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION II

LAWRENCE PAUL SHANDOLA,
Appellant,

v.

PAULA HENRY, et al.,
Respondents.

No. 48346-7-II

APPELLANT'S REPLY TO
RESPONDENT'S RESPONSE TO
APPELLANT'S OPENING BRIEF

COMES NOW LAWRENCE PAUL SHANDOLA (hereinafter denoted
"Appellant"), pro se, and submits this Reply to Respondents' Joint
Response (Resp.) filed in the above listed Case.

I. CORRECTED STATEMENT OF THE CASE

Respondent contends that 28 May 2015 is more than a year after 24
June 2014 [actually 25 July 2014]. Resp. at 4. Such contention is a
factual impossibility. 28 May 2015 is 10 months, three days after 25
July 2014.

II. REPLY TO ARGUMENTS

A. THE COURT CANNOT ENFORCE AN INVALIDATED LAW

Respondents contend that the Davis Court cannot be applied
retroactively. Resp., p. 6. Respondents misconstrue the underlying
argument and, consequently, argue frivolities.

1. Res Judicata Does not Apply

P/M: 9/13/16

Respondents contend that Appellant seeks the relief of "re-litigation of a cause of action that has already been the subject of a final judgment." Resp., p. 8. However, Appellant was very clear in the underlying motion that he was not seeking to relitigate the cause of action, but only to vacate the punitive money Judgments imposed under an invalidated, unconstitutional law. See CP 61.

What's more, Appellant's "claim" in the underlying Motion is that the law relied upon by the Court to impose punitive money Judgments against him has been invalidated as unconstitutional. Said claim has nothing to do with relitigation of the original Cause of Action. Respondents' contentions are without merit and wholly frivolous.

2. After The Davis Decision, There Is No Statute.

Respondents contend that the trial Court should be affirmed because Davis v. Cox should not be applied retroactively. Resp., p. 8. Respondents' arguments are, again, without merit.

The retroactive application of a statute, or change to a statute, has no bearing here because Davis v. Cox did not change RCW 4.24.525, or create a new rule therefor, as needlessly argued by Respondents. Instead, it invalidated RCW 4.24.525 as being unconstitutional. Logically, there is no statute to apply--whether retroactively or prospectively--and that is the premise of Appellant's claim at bar.

Appellant's citation to Johnson v. Morris, 87 Wn. 2d 922, 557 P. 2d 1299 (1976) is for the premise that, as Davis interpreted RCW 4.24.525 for the first time, its holding is given effect as of RCW 4.24.525's enactment. Because Davis interpreted RCW 4.24.525 to be unconstitutional, it invalidated that statute in its entirety and the

effect of which is given all the way back to enactment. RCW 4.24.525 has, thus, been unconstitutional and invalid since its enactment, and the Superior Court's reliance thereupon to impose punitive money judgments against Appellant must be vacated. Respondents' arguments to the contrary are absurd and incredulous, and this Court must disregard the same.

B. RESPONDENTS DID NOT RAISE THIS ARGUMENT BELOW

Respondents argue for the first time that there was no basis for vacation under CR 60(b)(11). Resp., p. 14. Respondents did not address this issue below and failed to preserve it for review. The Court must decline to consider this issue. Federal Fin. Co. v. Gerard, 90 Wn. App. 169, 184-85, 949 P. 2d 412 (1998); Dept. of Ecology v. Tiger Oil Co., 166 Wn. App. 720, 759 n.56, 271 P. 3d 331 (2012); RAP 2.5(a)(3).

C. MONTGOMERY v. LOUISIANA SUPPORTS APPELLANT'S ARGUMENT

Respondents contend that, because Montgomery is a criminal habeas corpus case, it has no application to the facts of this case. Resp., p. 15. Respondents misunderstand the law, and the argument.

While Montgomery is a criminal habeas corpus case, that Court stated, "[a] penalty imposed pursuant to an unconstitutional law is no less void because the ... [judgment] became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbid." Montgomery, 193 L. Ed. 2d at 617. Such a statement is relevant here, because the \$10,000.00 money judgments for each Respondent were imposed as a punitive sanction against Appellant under a law which was later held unconstitutional. Here, Respondents are attempting to "grandfather"

the penalty imposed against Appellant in the attempt to enforce punishment the Constitution of Washington forbids. To this limited, specific extent, Montgomery is cited and used. The remainder of Respondents' argument is without merit and must be disregarded by the Court.

D. RESPONDENTS SHOULD NOT BE AWARDED ATTORNEY FEES

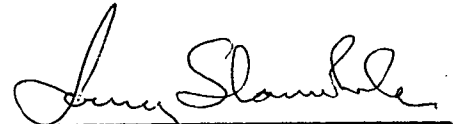
The Court should not award attorney fees to Respondents as their Resp. is clearly without merit.

III. CONCLUSION

The Court must disregard Respondents' Joint Resp. because it is absurd and incredulous: Whether a change in a statute is to be applied retroactively or not has no merit here because in this case: there is no statute. There is, therefor, nothing to apply retroactively. Nor is it a new legal principle, nor a new rule, nor an amendment of a statute. Davis v. Cox invalidated the entirety of the statute upon which the trial Court was wholly reliant in entering punitive sanctions against Appellant. The Respondents' rhetoric sophistry to create issues and argue frivoloties which are not properly before the Court must not be tolerated.

Respondents' Joint Resp. must be disregarded, and they are not entitled to fees. The Court must grant Appellant's relief as set forth in his opening brief.

Respectfully submitted this 11 day of September 2016.


LAWRENCE PAUL SHANDOLA.

DECLARATION OF SERVICE BY MAIL
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I, LAWRENCE SHANDOLA, declare and say:

STATE OF WASHINGTON

That on the 12 day of SEPTEMBER, 2016, I deposited the
following documents in the Stafford Creek Correction Center Legal Mail system, by First
Class Mail pre-paid postage, under cause No. 48346-7-II:

* REPLY BRIEF

* DECLARATION OF SERVICE BY MAIL GR 3.1

addressed to the following:

* WASHINGTON STATE COURT
OF APPEALS DIVISION II
950 BROADWAY STE. 300
TACOMA WA 98402

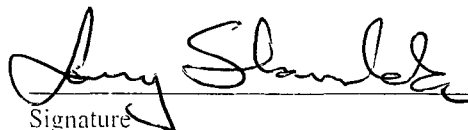
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901 5TH AVE STE 1400
SEATTLE WA. 98164

* JOHN LADEBURG SR.
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TACOMA WA 98405

I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct.

DATED THIS 12 day of SEPTEMBER, 2016, in the City of
Aberdeen, County of Grays Harbor, State of Washington.


Signature

LAWRENCE SHANDOLA

Print Name

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STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

ORIGINAL